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SHIPBUILDING AND DRY DOCK COMPANY
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 MARGARET McCUE, as Wrongful Death
Heir, and as Successor-in-Interest to
12 STANLEY McCUE, Deceased; and
STEPHANIE FINCH and JEFFERY
13 McCUE, as Legal Heirs of STANLEY
McCUE, Deceased, JOANN VALLADON,
14 as Wrongful Death Heir, and as Successor-
in-Interest to GEORGE VALLADON,
15 Deceased; and BRAD VALLADON,
JOYCE SISSOM, TERRY VALLADON,
16 as Legal Heirs of GEORGE VALLADON,
Deceased, MARGARET LINDSEY, as
17 Wrongful Death Heir, and as Successor-in-
Interest to ROBERT LINDSEY, Deceased;
18 and CYNTHIA LINDSEY TATE and
MARCUS LINDSEY, as Legal Heirs of
19 ROBERT LINDSEY, Deceased,

20 Plaintiffs,

21 v.

22 GENERAL ELECTRIC COMPANY;
KAISER VENTURES LLC, NEWPORT
23 NEWS SHIPBUILDING AND DRY
DOCK COMPANY, UNITED STATES
24 STEEL CORPORATION,

25 Defendants.
26

Case No. CV08-3181 EMC

**ANSWER OF NEWPORT NEWS
SHIPBUILDING AND DRY DOCK
COMPANY TO COMPLAINT;
DEMAND FOR JURY TRIAL**

Complaint Filed: July 2, 2008

27 Defendant NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY

28 ("Newport" or "Defendant") in answer to the complaint of plaintiffs Margaret McCue, et.

1 al. ("Plaintiffs") for asbestos wrongful death, admits, denies, and alleges as follows:

2 I.

3 PARTIES

4 1. Newport lacks sufficient information to admit or deny the allegations
5 contained in paragraph 1 and therefore denies each and every allegation.

6 2. Newport admits that the term "Decedents" refers to Stanley McCue, George
7 Valladon, and Robert Lindsey. Newport lacks sufficient information to admit or deny the
8 remaining allegations contained in paragraph 2 and therefore denies each and every
9 allegation.

10 3. Newport admits that the term "surviving spouse" refers to Margaret McCue,
11 Joann Valladon, and Margaret Lindsey. Newport lacks sufficient information to admit or
12 deny the remaining allegations contained in paragraph 3 and therefore denies each and
13 every allegation.

14 4. Newport lacks sufficient information to admit or deny the allegations
15 contained in paragraph 4 and therefore denies each and every allegation.

16 5. Newport lacks sufficient information to admit or deny the allegations
17 contained in paragraph 5 and therefore denies each and every allegation.

18 6. To the extent that "defendants" includes Newport, Newport denies the
19 allegations contained in paragraph 6. As to the remaining allegations, Newport lacks
20 sufficient information to admit or deny the allegations contained in paragraph 6 and
21 therefore denies each and every allegation.

22 7. Newport lacks sufficient information to admit or deny the allegations
23 contained in paragraph 7 and therefore denies each and every allegation.

24 8. Newport admits that it is a corporation. Newport lacks sufficient information
25 to admit or deny the remaining allegations contained in paragraph 8 and therefore denies
26 each and every allegation.

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1 II.

2 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

3 9. Jurisdiction: Newport admits that it is a corporation and its principal place
4 of business is in Virginia. As to the remaining allegations of paragraph 9, Newport lacks
5 sufficient information to admit or deny the allegations and therefore denies each and every
6 allegation.

7 10. Venue/ Intradistrict Assignment: Newport denies the allegations contained
8 in paragraph 10.

9 III.

10 **CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION (Negligence-Survival)**

12 11. Newport denies that it is in any way responsible for Plaintiffs' or Decedent's
13 alleged injuries or damages and further denies that it can be held responsible for the
14 purported conduct of "Alternate Entities" or any of them as alleged in the complaint. As to
15 the remaining allegations of paragraph 11, Newport lacks sufficient information to admit
16 or deny the allegations and therefore denies each and every allegation.

17 12. Newport denies the allegations contained in paragraph 12 as applied to it. As
18 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
19 admit or deny the allegations and therefore denies each and every allegation.

20 13. Newport denies the allegations contained in paragraph 13 as applied to it. As
21 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
22 admit or deny the allegations and therefore denies each and every allegation.

23 14. Newport denies the allegations contained in paragraph 14 as applied to it. As
24 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
25 admit or deny the allegations and therefore denies each and every allegation.

26 15. Newport denies the allegations contained in paragraph 15 as applied to it. As
27 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
28 admit or deny the allegations and therefore denies each and every allegation.

1 16. Newport denies the allegations contained in paragraph 16 as applied to it. As
2 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
3 admit or deny the allegations and therefore denies each and every allegation.

4 17. Newport denies the allegations contained in paragraph 17 as applied to it. As
5 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
6 admit or deny the allegations and therefore denies each and every allegation.

7 18. Newport lacks sufficient information to admit or deny the allegations
8 contained in paragraph 18 and therefore denies each and every allegation.

9 19. Newport lacks sufficient information to admit or deny the allegations
10 contained in paragraph 19 and therefore denies each and every allegation.

11 20. Newport denies the allegations contained in paragraph 20 as applied to it. As
12 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
13 admit or deny the allegations and therefore denies each and every allegation.

14 21. Newport denies the allegations contained in paragraph 21 as applied to it. As
15 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
16 admit or deny the allegations and therefore denies each and every allegation.

17 22. Newport denies the allegations contained in paragraph 22 as applied to it. As
18 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
19 admit or deny the allegations and therefore denies each and every allegation.

20 23. Newport denies the allegations contained in paragraph 23 as applied to it. As
21 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
22 admit or deny the allegations and therefore denies each and every allegation.

23 24. Newport denies the allegations contained in paragraph 24 as applied to it. As
24 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
25 admit or deny the allegations and therefore denies each and every allegation.

26 25. Newport denies the allegations contained in paragraph 25 as applied to it. As
27 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
28 admit or deny the allegations and therefore denies each and every allegation.

1 26. Newport denies the allegations contained in paragraph 26 as applied to it. As
 2 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
 3 admit or deny the allegations and therefore denies each and every allegation.

4 27. Newport denies the allegations contained in paragraph 27 as applied to it. As
 5 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
 6 admit or deny the allegations and therefore denies each and every allegation.

7 **SECOND CAUSE OF ACTION (Products Liability-Survival)**

8 28. Newport incorporates its responses to paragraphs 11-27 and by reference in
 9 response to the allegations contained in paragraph 28.

10 29. Newport denies the allegations contained in paragraph 29 as applied to it. As
 11 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
 12 admit or deny the allegations and therefore denies each and every allegation.

13 30. Newport denies the allegations contained in paragraph 30 as applied to it. As
 14 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
 15 admit or deny the allegations and therefore denies each and every allegation.

16 31. Newport denies the allegations contained in paragraph 31 as applied to it. As
 17 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
 18 admit or deny the allegations and therefore denies each and every allegation.

19 32. Newport denies the allegations contained in paragraph 32 as applied to it. As
 20 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
 21 admit or deny the allegations and therefore denies each and every allegation.

22 33. Newport denies the allegations contained in paragraph 33 as applied to it. As
 23 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
 24 admit or deny the allegations and therefore denies each and every allegation.

25 34. Newport denies the allegations contained in paragraph 34 as applied to it. As
 26 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
 27 admit or deny the allegations and therefore denies each and every allegation.

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1 35. Newport denies the allegations contained in paragraph 35 as applied to it. As
2 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
3 admit or deny the allegations and therefore denies each and every allegation.

4 36. Newport denies the allegations contained in paragraph 36 as applied to it. As
5 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
6 admit or deny the allegations and therefore denies each and every allegation.

7 37. Newport denies the allegations contained in paragraph 37 as applied to it. As
8 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
9 admit or deny the allegations and therefore denies each and every allegation.

10 38. Newport denies the allegations contained in paragraph 38 as applied to it. As
11 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
12 admit or deny the allegations and therefore denies each and every allegation.

13 **THIRD CAUSE OF ACTION (Negligence-Wrongful Death)**

14 39. Newport incorporates its responses to paragraphs 11-27 and 29-38 by
15 reference in response to the allegations contained in paragraph 38.

16 40. Newport admits that the complaint alleges the relationship between Decedent
17 and Plaintiffs but Newport lacks sufficient information to admit the accuracy of the
18 allegations.

19 41. Newport lacks sufficient information to admit or deny the allegations
20 contained in paragraph 41 and therefore denies each and every allegation.

21 42. Newport denies the allegations contained in paragraph 42 as applied to it. As
22 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
23 admit or deny the allegations and therefore denies each and every allegation.

24 43. Newport lacks sufficient information to admit or deny the allegations
25 contained in paragraph 43 and therefore denies each and every allegation.

26 44. Newport denies the allegations contained in paragraph 44 as applied to it. As
27 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
28 admit or deny the allegations and therefore denies each and every allegation.

1 45. Newport denies the allegations contained in paragraph 45 as applied to it. As
 2 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
 3 admit or deny the allegations and therefore denies each and every allegation.

4 **FOURTH CAUSE OF ACTION (Products Liability-Wrongful Death)**

5 46. Newport incorporates its responses to paragraphs 11-27 and 29-38, and 40-
 6 45 by reference in response to the allegations contained in paragraph 46.

7 47. Newport denies the allegations contained in paragraph 47 as applied to it. As
 8 to the remaining allegations of this paragraph, Defendant lacks sufficient information to
 9 admit or deny the allegations and therefore denies each and every allegation.

10 **FIRST AFFIRMATIVE DEFENSE**

11 48. Plaintiffs' complaint fails to state a claim against Newport upon which relief
 12 may be granted.

13 **SECOND AFFIRMATIVE DEFENSE**

14 49. Newport alleges that the product involved was materially altered or changed
 15 by a party or parties other than, and without the permission of, this answering defendant,
 16 its employees, servants, or other agents, such alteration or change creating the alleged
 17 defect, if any, which was the legal cause of Plaintiffs' and/or decedents' injuries, or
 18 damages, if any.

19 **THIRD AFFIRMATIVE DEFENSE**

20 50. Newport alleges that the defect in the product, if any, was known to
 21 decedents, who used said product after full knowledge of said alleged defect; that, as a
 22 result, Plaintiffs are barred from recovery herein, proportionately or totally, in that
 23 decedents voluntarily exposed themselves and their property to a known danger and
 24 thereby assumed the risk of any injury or damage resulting from that injury.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 51. Newport alleges that Plaintiffs' complaint and each and every cause of action
 27 therein based upon warranty or breach thereof, is barred as a result of failure of Plaintiffs
 28 or decedents to give notice required under *Commercial Code* section 2607(3)(a).

FIFTH AFFIRMATIVE DEFENSE

52. Newport alleges that the product was improperly maintained and cared for by decedents or their employers or agents; that such improper maintenance and care created the defect, if any, that was the legal cause of Plaintiffs' and decedents' injuries and damages, if any; that such improper maintenance and care was unforeseeable to this answering defendant; and that Plaintiffs' claim is thereby reduced by the percentage of all responsibility attributable to Plaintiffs, decedents, their employers or other agents by virtue of said improper maintenance and care.

SIXTH AFFIRMATIVE DEFENSE

53. Newport alleges that the loss, injury, or damage, if any, incurred by Plaintiffs was the result of superseding or intervening causes arising from negligent or willful acts or omissions by parties which Newport neither controlled nor had the right to control, and said losses, injuries, or damages were not proximately or legally caused by any act, omission, or other conduct of Newport.

SEVENTH AFFIRMATIVE DEFENSE

54. Newport alleges that the Plaintiffs and decedents failed to mitigate their damages, if any, in that they failed to use reasonable diligence in caring for decedents' injuries and reasonable means to prevent their aggravation or to accomplish their healing.

EIGHTH AFFIRMATIVE DEFENSE

55. Newport alleges that, if it is responsible to Plaintiffs, which responsibility is expressly denied, Newport shall be liable only for the amount of non-economic damages allocated to Newport in direct proportion to its percentage of fault, if any.

NINTH AFFIRMATIVE DEFENSE

56. Newport alleges that Plaintiffs' claims are barred by the doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

57. Newport alleges that, if the products described in the complaint were manufactured or distributed by this answering defendant, they were manufactured or distributed in accordance with specifications and requirements supplied to defendant by

1 persons other than defendant including, but not limited to, the government of the United
 2 States of America. Any defect in said products was caused by deficiencies in said
 3 mandatory specifications and requirements supplied to defendant, which deficiencies were
 4 neither known to defendant nor discoverable by it with the exercise of reasonable care.

5 ELEVENTH AFFIRMATIVE DEFENSE

6 58. Newport alleges that neither Plaintiffs nor decedents were in privity with
 7 defendant and, therefore, may not rely upon the theory of any alleged breach of express or
 8 implied warranty.

9 TWELFTH AFFIRMATIVE DEFENSE

10 59. Newport alleges that any exposure of decedents to defendant's products was
 11 so minimal as to be insufficient to establish a reasonable degree of probability that any
 12 such product caused any alleged injury, damage, or loss to Plaintiffs or decedents.

13 THIRTEENTH AFFIRMATIVE DEFENSE

14 60. Newport is informed and believes, and upon such information and belief
 15 alleges that decedents were negligent, careless, reckless, and acted unlawfully in the use,
 16 control, direction and application of their bodily movements and the equipment, safety
 17 devices, and other facilities supplied to them, and existing as a part of their environment,
 18 and the injuries, if any, and damages, if any, were directly and legally caused, contributed
 19 to, and exacerbated by their own negligence.

20 FOURTEENTH AFFIRMATIVE DEFENSE

21 61. Newport is informed and believes and upon such information and belief
 22 alleges that decedents misused the product and used same after knowledge of defect, if
 23 any, existing therein.

24 FIFTEENTH AFFIRMATIVE DEFENSE

25 62. Newport alleges that the decedents' employers so negligently, carelessly,
 26 recklessly, and unlawfully directed, controlled, and supplied decedents and their co-
 27 employees with a working environment, including safety and protective equipment,
 28 clothing or the lack thereof, so as to directly and proximately cause and contribute to the

1 injuries in question, if the same do exist, and to the extent that any sum or sums have been
2 paid to Plaintiffs by said employer, this claim is barred thereby.

3 **SIXTEENTH AFFIRMATIVE DEFENSE**

4 63. Newport alleges that the complaint, and each and every cause of action
5 therein, fails to state facts sufficient to constitute a cause of action against defendant and is
6 barred by the provisions of *Labor Code* sections 3600, 3601, and/or 3602.

7 **SEVENTEENTH AFFIRMATIVE DEFENSE**

8 64. The complaint, and each and every cause of action therein, is barred by the
9 applicable statute of limitations.

10 **EIGHTEENTH AFFIRMATIVE DEFENSE**

11 65. Newport alleges that the statutory authority, including but not limited to *Civil*
12 *Code* section 3294, pursuant to which plaintiffs claims punitive damages is invalid on its
13 face and/or as applied to this answering defendant pursuant to the First, Fifth, Eighth and
14 Fourteenth Amendments of the Constitution of the United States and Article I of the
15 Constitution of the State of California.

16 **NINETEENTH AFFIRMATIVE DEFENSE**

17 66. Newport alleges that, insofar as the Complaint alleges punitive damages
18 against defendant, such damages are not permitted in actions based upon wrongful death.

19 **TWENTIETH AFFIRMATIVE DEFENSE**

20 67. The complaint, and every purported cause action against Newport is barred
21 by the "Government Contractor Defense" recognized in *Boyle v. United Technologies*
22 *Corp.* 487 U.S. 500 (1988).

23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24 68. The complaint, and every purported cause action against Newport is barred
25 by the derivative sovereign immunity defense recognized in *Yearsley v. W.A. Ross*
26 *Construction Co.* 309 U.S. 18 (1940).

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TWENTY-SECOND AFFIRMATIVE DEFENSE

69. The complaint, and every purported cause action against Newport is barred by the "Sophisticated User" doctrine recognized in *Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 71 [74 Cal.Rptr.3d 108]. A manufacturer is not liable to a sophisticated user of its product for failure to warn of a risk, harm, or danger, if the sophisticated user knew or should have known of that risk, harm, or danger. The "Sophisticated User" defense applies to both negligence and strict liability causes of action. At all relevant times, decedents knew or should have known of the risk, harm or danger, if any, posed by the use of the products allegedly at issue in this case.

TWENTY-THIRD AFFIRMATIVE DEFENSE

70. Defendant is informed and believes and thereon alleges that to the extent that the "consumer expectations" test is applicable to any design defect claim, if any, it would depend upon the reasonable expectation of the "sophisticated user" and not the reasonable expectation of an ordinary consumer, employee, or any individual member of the "sophisticated user" group.

WHEREFORE, defendant Newport News Shipbuilding and Dry Dock Company prays for judgment as follows:

1. That Plaintiffs take nothing by way of their complaint and that the complaint be dismissed with prejudice;
2. That Newport News Shipbuilding and Dry Dock Company be awarded its costs of suit and attorney fees, as applicable; and
3. For such other relief as the court deems just and proper.

Dated: August 11, 2008

HAIGHT BROWN & BONESTEEL LLP

By: Nairi Chakalian

Daniel J. Kelly
Nairi Chakalian
Attorneys for Defendant
NEWPORT NEWS SHIPBUILDING
AND DRY DOCK COMPANY

DEMAND FOR JURY TRIAL

Defendant Newport News Shipbuilding and Dry Dock Company hereby demands a trial by jury in this action.

Dated: August 11, 2008

HAIGHT BROWN & BONESTEEL LLP

By: Nairi Chakalian
Daniel J. Kelly
Nairi Chakalian
Attorneys for Defendant
NEWPORT NEWS SHIPBUILDING
AND DRY DOCK COMPANY